Supreme Court, U.S.
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No. 94-252

In The

Supreme Court of the United States

October Term, 1994

MERCY MEMORIAL HOSPITAL CORPORATION,

Petitioner,

v.

HOSPITAL EMPLOYEE'S DIVISION OF LOCAL 79, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

The opinions below, the basis for this Court's jurisdiction, and the relevant statutory provision are set forth in the Petition for a Writ of Certiorari at 1-2 and Appendix A, B, and C, and are therefore not reprinted here.

STATEMENT OF THE CASE

This is a case to vacate a labor arbitration award. The arbitration award concerns the December 23, 1987 discharge of Petitioner's employee, Charlotte Baum. Petitioner and Ms. Baum's collective bargaining agent, The Hospital Employee's Division of Local 79, Service Employees International Union, AFL-CIO ("Union"), agreed to arbitrate Ms. Baum's discharge as part of a settlement to resolve another case involving the same parties.[1]

[1] The prior litigation arose out of Petitioner's unsuccessful effort to oust the Union by subsidizing and assisting employees in two decertification campaigns. In that case, the Union and Ms. Baum sued Petitioner Mercy-Memorial Hospital Corporation ("Hospital" or "Petitioner") for violating the Labor-Management Relations Act, 29 U.S.C. Sec. 186(a)(3), and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. Sec. 1961, *et seq.*

The parties settled that case on May 1, 1990, agreeing to, among other things, submit Ms. Baum's grievance to "final and binding arbitration" under the parties' 1983-85 collective bargaining agreement ("Agreement"). (See Petition for a Writ of Certiorari ("Pet") at Appendix D.)

The nature of the dispute was the "Improper discipline and discharge of Charlotte Baum." See Resp. Brief App. A.

The parties arbitrated Ms. Baum's grievance for eleven days before Arbitrator Michael Long, an arbitrator mutually selected by the parties. During the hearing, twelve witnesses testified and fifty-four exhibits were admitted. At the hearing Petitioner argued that it had "just cause" to discharge Ms. Baum because she:

(1) tampered with time cards and punched another employee's time card;

(2) misrepresented Hospital time records;

(3) left work without permission;

(4) asked and encouraged co-workers to break hospital rules;

(5) gave "false and misleading information" to hospital management; and

(6) repeatedly violated Petitioner's work rules.

The Union argued that Ms. Baum, the Union Steward at the Hospital, did not violate any rule and Petitioner had no "just cause" to discharge Ms. Baum.

On July 9, 1992, the Arbitrator rendered a 62-page opinion which answered the question the parties hired him to resolve: whether Petitioner "improper[ly] discipline[d] and discharge[d] . . . Charlotte Baum." (Resp. Brief App. A.) The Arbitrator considered the facts, the Agreement's enumerated dischargeable offenses, the unilaterally implemented work rules, and every relevant Agreement provision, including a provision Petitioner

did not highlight for this Court in the Petition's statement of facts:

> **After completion of the probationary period, *no employee shall be discharged or suspended without just cause.* Just cause for immediate discharge shall include such acts as: misappropriation of funds or theft; assault or attempted assault of a patient or personnel of the Hospital; being under the influence of alcohol or drinking alcohol on the Hospital premises; illegal use of drugs or narcotics; deliberate and material falsification of Hospital records; or gross personal misconduct detrimental to patients.**

(Pet. App. D-11.) (Emphasis added.)

The Arbitrator *specifically* found no just cause for discharge. He categorically rejected the Hospital's claims that Ms. Baum tampered with time cards, misrepresented Hospital records, or left work without permission. (Pet App. C-48.) On three separate occasions, Arbitrator Long rejected the Hospital's claim that Ms. Baum intentionally provided false and misleading information to the Hospital during its investigation. And, he dismissed the Hospital's claim that Ms. Baum's employment history was just cause for discharge. (Pet. App. C-47.) According to the Arbitrator, the Hospital failed to prove that Ms. Baum was guilty of any dischargeable offense or work rule violation. (Pet. App. C-55.)

Although the Arbitrator found Ms. Baum "asked and encouraged" co-workers to punch her time card, one of the sixteen charges the Hospital lodged against her, he concluded that this violation, unenumerated and not

even mentioned in the Hospital's work rules, and utterly absent from the Agreement, did *not* constitute just cause for discharge. (Pet. App. C-53.) The Arbitrator concluded that the Hospital had improperly discharged Ms. Baum. (Pet. App. C-55.)[2]

The Hospital refused to honor the "final and binding" arbitration decision. Rather, it sued to vacate the award. In January 1993, the United States District Court for the Eastern District of Michigan upheld the award. (Pet. App. B.)

Thereafter, the Hospital appealed to the Sixth Circuit Court of Appeals. The Sixth Circuit examined the arbitration decision and the Agreement to determine whether the decision "drew its essence" from the Agreement. (Pet. App. A-6.) On May 12, 1994, the Sixth Circuit made short order of the Hospital's challenge to the arbitration decision. Finding that the Arbitrator's interpretation of the Agreement was "proper," the Sixth Circuit upheld the arbitration award. (Pet. App. A-9).

On August 8, 1994, the Hospital appealed to this Court.

REASONS FOR DENYING THE WRIT

The Hospital's petition is patently without merit. But, Respondent must address Petitioner's legal and factual

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[2] Arbitrator Long also found that the Hospital conducted a "chilling" investigation that targeted Ms. Baum and encouraged employees to implicate Ms. Baum in wrongdoing to "save themselves." (Pet. App. C-50-51.)

misrepresentations. *See* Sup. Ct. R. 15 ("Counsel are admonished that they have an obligation to the Court to point out any perceived misstatements *in the brief in opposition* and not later.").

As early as 1960, this Court articulated the law applicable to this case. *See* the *Steelworkers Trilogy;*[3] *see also, United Paperworkers International v. Misco,* 484 U.S. 29 (1987). Even more recently, this Court has referred approvingly to these cases, now the cornerstones of labor arbitration law. *See Groves v. Ring Screw Works,* 498 U.S. 168, n.11 (1990); *AT&T Technologies v. Communication Workers of America,* 475 U.S. 643, 648 (1986).

This Petition merely disputes the Sixth Circuit's application of settled law. And, the Hospital's fact-laden Petition makes obvious what Petitioner actually tries to conceal: that this Petition involves only a fact-specific controversy that is best left resolved in the lower federal courts. Therefore, this Petition presents no question to merit this Court's review.[4]

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[3] *United Steelworkers v. American Manufacturing Co.,* 363 U.S. 564 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.,* 363 U.S. 574 (1960); *United Steelworkers v. Enterprise Wheel and Car Corp.,* 363 U.S. 593 (1960).

[4] This Court has refused to grant certiorari to arbitration appeals every single time but once during its last three terms. During the 1991-92 and 1993-94 terms, this Court denied review to every petition seeking review of an arbitration award. *See U.S.L.W.,* Vol. 62 at 44; Vol. 60 at 46. This Court only accepted review of one question of one petition during its 1992-93 term. That case involved the National Labor Relations Board's setting aside of arbitration facts to award reinstatement and back pay to a grievant. *See U.S.L.W.,* Vol. 61 at 49.

The Hospital also asserts that the Sixth Circuit's decision "conflicts" with its *own* and other circuits' decisions. *See* Sup. Ct. R. 10(a). But, this is a transparent attempt to formulate the Petition to gain this Court's review. There is no intra- or inter-circuit conflict.

The Hospital finally claims that the Sixth Circuit's decision is "clearly erroneous." (Pet. at 16.) But, the Sixth Circuit decision the Hospital seeks to appeal comports scrupulously with this Court's decisions, its own decisions, and other circuits' decisions. The Sixth Circuit merely applied settled, uniform arbitration law.

The Hospital has now run out of appeals of right. Its unreasonable effort to avoid a two-year-old arbitration award has driven the Hospital to file this frivolous and politically motivated petition. In doing so, the Hospital wastes this Court's precious time and attention.

The Hospital's Petition is without merit. When its flimsy window dressing is removed, all that remains is the arbitration loser's familiar but fatigued lament: that the arbitrator's fact finding was flawed and the award did not draw its essence from the contract. This does not justify this Court's exercise of jurisdiction.

ARGUMENT

The Hospital asks this Court to review an arbitration award it claims the Sixth Circuit erroneously affirmed. The Hospital first asserts that *Misco* contains a "precise exception" that applies to this case. (Pet. at 13.) Secondly, the Hospital claims that the Sixth Circuit did not apply

this "precise exception" to determine the award's validity. (Pet. at 14, 16-27.) Finally, the Hospital proposes that the arbitration award is not supported by the facts or the Agreement. (Pet. at 27-30.)

These assertions form the Hospital's single contention: that the Sixth Circuit upheld an arbitration award that did not draw its essence from the Agreement. This claim is false.

A. Petitioner's Precise Exception Claim Under *Misco*

Petitioner cites *Misco*, this Court's most recent, detailed pronouncement on a court's scope of arbitration award review, to support its case. Petitioner claims that *Misco* contains "the precise exception to the general rule which controls this case." (Pet. at 13.) As if it uncovered new law, the Hospital argues that *Misco's* "precise exception" is that an arbitrator cannot fashion a grievance remedy when the Agreement unambiguously precludes the arbitrator from doing so.

But, the Hospital is replowing old ground. The Hospital's so-called "precise exception" merely restates this Courts' nearly thirty-five-year-old general rule that "an arbitrator is confined to interpretation and application of the collective bargaining agreement." *Enterprise Wheel*, 363 U.S. at 597.

Petitioner's rendition of the so-called *Misco* "precise exception" is a self-serving compilation of disconnected and incomplete *Misco* statements, reconnected to state the proposition Petitioner seeks. (Pet. at 13-14.) This

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Petitioner's rendition of the so-called *Misco* "precise exception" is a self-serving compilation of disconnected and incomplete *Misco* statements, reconnected to state the proposition Petitioner seeks. (Pet. at 13-14.) This

approach to legal analysis is unsupportable and intellectually dishonest.

Thus, Petitioner creates its "precise exception" at Pet. 13-14:

> **[T]he arbitrator's award settling a dispute with respect to the interpretation or application of a labor agreement must draw its essence from the contract and cannot simply reflect the arbitrator's own notions of industrial justice . . . the parties, of course, may limit the discretion of the arbitrator . . . and it may be, as the Company argues, that under the contract involved here, it was within the unreviewable discretion of management to discharge an employee once a violation of Rule II.1 was found.**

But, the *Misco* decision is more comprehensive than the Hospital admits. The *Misco* decision anticipated routine challenges to an arbitrator's decision. Thus, this Court actually stated:

> **[T]he arbitrator's award settling a dispute with respect to the interpretation or application of a labor agreement must draw its essence from the contract and cannot simply reflect the arbitrator's own notions of industrial justice. *But as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision . . .***

Misco at 38. (Emphasis added.)

In *Misco*, this Court addressed the obvious tension between limitations on an arbitrator's authority, however

imposed, and the parties' agreement to let the arbitrator decide whether "just cause" exists for discharge. Thus, this Court wrote:

> **The parties, of course, may limit the discretion of the arbitrator in this respect [formulating remedies]; and it may be, as the Company argues, that under the contract involved here, it was within the unreviewable discretion of management to discharge an employee once a violation of Rule II.1 was found.** ***But the parties stipulated that the issue before the arbitrator was whether there was "just" cause for discharge, and the arbitrator, in the course of his opinion, cryptically observed that Rule II.1 merely listed causes for discharge and did not expressly provide for immediate discharge.***

Misco at 40-41. (Emphasis added.)

Despite the Hospital's efforts to bend *Misco* to its argument, *Misco* merely amplifies the *Steelworkers Trilogy* which sets the standard for arbitration award review. Petitioner's characterization of its mangled quote as this Court's "precise language" on an arbitrator's authority to render a remedy under a particular contract is false and self-serving.

Here, the Sixth Circuit properly applied *Misco*, not the Hospital's version of *Misco*. Accordingly, the Petition should be denied.

B. Petitioner's Claims of Conflict

Petitioner claims that this Court should review the Sixth Circuit's decision because it improperly applied

Misco, its *own* decisions, and other circuits' decisions. The Hospital alludes to the Sixth Circuit's creation of an intra- and inter-circuit conflict. There is no conflict.

The Hospital mischaracterizes Sixth Circuit and other circuit law, and the record, in its doomed attempt to gain this Court's review. Petitioner relies on the Sixth Circuit cases cited at Pet. 14-15, Pet. n.1, and Pet. 17-27, where "[c]ourts have reversed arbitrator awards where the award conflicts with express provisions of the labor agreement." (Pet. at 14, n.1.)

But Petitioner's cited cases are inapposite because they all involve the vacation of an arbitration award when the reviewing court found the contract was *unambiguous* and the arbitrator's award was unsupportable in light of that unambiguity. That is not the case here. In this case, the Sixth Circuit specifically found the Agreement's relevant terms were susceptible to more than one interpretation. (Pet. App. A-7.) And, it concluded that the Arbitrator's interpretation of the Agreement's relevant terms was proper.

The Hospital disputes the Sixth Circuit's application of *Eberhard Foods v. Handy*, 868 F.2d 890 (6th Cir. 1989) (Pet. at 22). Yet, *Eberhard* is directly on point as it regards *ambiguous* contract language. Here, the Sixth Circuit specifically found the Agreement language ambiguous, suspectable to either Petitioner's or the Arbitrator's interpretation. (Pet. App. A-7.) The Sixth Circuit applied the appropriate law and chose the Arbitrator's interpretation.

The decision creates no conflict in the law. The Petition should be denied.

C. Petitioner's "Clearly Erroneous" Claims

Petitioner asserts that the Sixth Circuit's opinion is "clearly erroneous," but its lengthy discourse on the case facts underscores the Petition's complete lack of merit. Petitioner claims that the Sixth Circuit erred by:

- "misstat[ing] the Hospital's position" and not noting that Petitioner's argument rested on Article VI, Section 4 of the Agreement. (Pet. at 16.)
- "never address[ing] the express limitation on the power of the Arbitrator concerning modification of disciplinary penalties." (Pet. at 17.)
- "never address[ing] the management rights clause giving the Hospital the exclusive right to fix and determine disciplinary penalties." (*Id.*)
- "never address[ing] the section of the agreement which stated that an Arbitrator could not alter or modify the agreement nor imply any obligations which were not expressly stated."
- not applying "its prior opinions which reversed arbitration awards where the arbitrator exceeded an express limitation on his power." (*Id.*)

The cases Petitioner claims the Sixth Circuit erroneously did not apply, collected at Pet. 14-15, n.1 and 17-27, center on inapposite facts and contract language. The Sixth Circuit's opinion does not suffer from the afflictions Petitioner notes, assuming that such afflictions constitute "clear error" and require this Court's review.

Contrary to Petitioner's contention, the Sixth Circuit affirmed the arbitration award after examining Article VI, Section 4 (Pet. App. A-3), noting that Petitioner "relies on" Article VI, Section 4. (Pet. App. A-6.) The Sixth Circuit also understood Petitioner's contention "that, once the arbitrator found that Baum had committed an act meriting discipline, the Hospital had just cause to discharge her." (Pet. App. A-6.) It is the same argument Petitioner now asserts in its Petition.

But, the Sixth Circuit disagreed with the Hospital. (Pet. App. A-6.) The court examined the Arbitrator's opinion to determine whether it "drew its essence" from the Agreement. The court reviewed whether the Agreement supported the arbitrator's rendition of a remedy different from the employer's for an offense not enumerated in the Agreement or the work rules. The Sixth Circuit simply held that the Agreement was ambiguous, susceptible to two interpretations: Petitioner's interpretation and the arbitrator's interpretation. (Pet. App. A-7.) The court held that the arbitrator's interpretation was reasonable, based on the contract and facts, and affirmed the award. (Pet. App. A-7.)

Except for its blatant disregard for the rights of workers and their union, this is a pedestrian suit to vacate an arbitration award. It is properly in the domain of the lower federal courts.

In the past, this Court has rejected the tactics the Hospital has applied in its Petition. In *Warrior and Gulf Navigation Co.*, 363 U.S. at 585, this Court noted that:

> [T]he court should view with suspicion an attempt to persuade it to become entangled in

> the construction of the substantive provisions of a labor agreement . . . when the alternative is to utilize the services of an arbitrator.

Id.

By its Petition, the Hospital *is* seeking to entangle this Court "in the construction of the substantive provisions of a labor agreement." This is not the basis for the exercise of this Court's jurisdiction.

CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Attorneys for Respondent

Dated: October 12, 1994

APPENDIX A

American Arbitration Association

VOLUNTARY LABOR ARBITRATION RULES
DEMAND FOR ARBITRATION

Date: May 21, 1990

TO: (Name) Mercy Memorial Hospital
(of party upon whom the Demand is made)

(Street Address) 708 North Macomb Street

(City and State) Monroe, MI (Zip Code) 48161

(Telephone)_____

The undersigned, a party to an arbitration agreement contained in a written contract dated May 4, 1990, providing for arbitration, hereby demands arbitrator thereunder.

(attach arbitration clause or quote hereunder)

NATURE OF DISPUTE: Improper discipline and discharge of Charlotte Baum.

REMEDY SOUGHT: Reinstatement and make whole, including seniority, back-pay and benefits for grievant Charlotte Baum.

HEARING LOCALE REQUESTED: Southfield, MI

You are hereby notified that copies of our arbitration agreement and of this Demand are being filed with the American Arbitration Association at its Southfield, MI Regional Office, with the request that it commence the administration of the arbitration.

Name of Claimant Charlotte Baum
Signed /s/Christopher P. Legghio
Title Attorney for SEIU, Local 79 and Charlotte Baum
Address 17117 West Nine Mile Road, Suite 1400
City and State Southfield, MI Zip Code 48075
Telephone (313) 559-2110
Name of Attorney Christopher P. Legghio
Address 17117 West Nine Mile Road, Suite 1400
City and State Southfield, MI Zip Code 48075
Telephone (313) 559-2110

To institute proceedings, please send three copies of this Demand with the administrative fee, as provided in Section 43 of the Rules, to the AAA. Send original of Demand to Respondent.